

ENFORCEMENT SUMMARY REPORT  
March 12, 2008

- ITEM: 7
- SUBJECT: Proposed settlement of Administrative Civil Liability Complaint against the Fallbrook Public Utility District for the discharge of 146,625 gallons of untreated sewage from June 17, 2006 to June 20, 2006 from a 6-inch diameter sewer pipeline into Fallbrook Creek, San Diego County. The Regional Board will consider settlement of violations alleged in Complaint No. R9-2007-0101. The settlement includes: (1) payment of \$20,000 to the State Water Resources Control Board and (2) the suspension of \$9,300 in liability when the Fallbrook Public Utility District completes specified actions to the satisfaction of the Regional Board. (Tentative Order No. R9-2008-0020) (*Joann Cofrancesco*)
- PURPOSE: The Regional Board will consider adoption of Tentative Order No. R9-2008-0020 with errata (Supporting Document Nos. 2 and 3), implementing the proposed settlement. If the Regional Water Board rejects the proposed settlement, the matter will be scheduled for a public hearing at a subsequent Regional Board meeting.
- PUBLIC NOTICE: On February 1, 2008, the Notice of Settlement was published in North County Times (Supporting Document No. 4). On February 11, 2008, Tentative Order No. R9-2008-0020 was posted on the Regional Board's website and made available at the Regional Board's office for review.
- DISCUSSION: On October 17, 2007, Administrative Civil Liability (ACL) Complaint No. R9-2007-0101 was issued to Fallbrook Public Utility District (FPUD) recommending that the Regional Board impose a civil liability in the amount of \$29,300 for the discharge of 146,625 gallons of sewage into Fallbrook Creek, which began on June 17, 2006 and continued until June 20, 2006. The ACL Complaint recommended assessment of liability based on a rate of \$0.20 per gallon (Supporting Document No. 5). The maximum liability pursuant to Water Code Section 13350 is \$5,000 per day of violation or up to \$10 per gallon discharged. The Technical analysis for the Complaint (Supporting Document No. 6) describes the allegations and reviews the required factors of Water Code section 13327.

The ACL Complaint was scheduled for a public hearing at the Regional Board's December 12, 2007 meeting. Prior to the scheduled hearing, Regional Board staff began settlement discussions with representatives of the FPUD. The hearing was postponed to allow an opportunity to continue settlement discussions. On January 14, 2008, the two parties reached an agreement in principle to settle the matter.

Tentative Order No. R9-2008-0020 formalizes the settlement agreement. The settlement agreement has been noticed in local newspapers and the Regional Board website, for at least 30 days prior to today's meeting, and the public has been provided the opportunity to provide written comments. Written comments are due by March 5, 2008. The settlement (Supporting Document No. 7) includes:

- (1) Payment of \$20,000 to the State Water Resources Control Board; and
- (2) The suspension of \$9,300 in liability when the FPUD provides evidence of satisfactory completion of purchase and installation of three "SmartCover" monitoring units.

The proposed settlement should be approved because:

1. There is a substantial monetary penalty. The proposed payment is sufficient to deter the FPUD from future non-compliance, and should act as a deterrent to non-compliance by others. It is consistent with liability imposed by the Regional Board for similar sewage spills. A comparison of liability imposed by the Regional Board for significant sewage spills is attached. (Supporting Document No. 8).
2. It includes funding and commitment from the FPUD to upgrade the sewer collection system to prevent and reduce future spills. The FPUD has already paid \$20,000 to the State Water Resources Control Board and provided the certification, confirming the purchase and installation of three "SmartCover" monitoring units satisfy the condition of the settlement (Supporting Document No. 9).

3. It is consistent with the State Board Enforcement Policy.
4. The Regional Board will conserve valuable staff resources that would have been allocated to preparation for hearing and responding to any administrative or judicial review that may be requested by the FPUD.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

- (1) Location Maps
- (2) Tentative Order No. R9-2008-0020
- (3) Errata Sheet
- (4) Proof of Newspaper Publication (February 1, 2008)
- (5) ACL Complaint No. R9-2007-0101
- (6) ACL Complaint Technical Staff Report
- (7) Settlement Agreement
- (8) Comparison of Previous Regional Board Sewage Discharge Enforcement Actions
- (9) FPUD's check and certification

RECOMMENDATION(S): The adoption of Tentative Order No. R9-2008-0020 with Errata Sheet is recommended.

If this item is removed from the consent calendar, the Executive Officer will provide a recommendation at the conclusion of the item.